THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 13789 OF 2007

Dt: 29th June 2007

Between:

Mohd.Sadiq S/o.Mohd.Abdul

…Petitioner

and

The Regional Manager, A.P.S.R.T.C.,
Adilabad Depot, Adilabad & others

…Respondents

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O R D E R:

The petitioner is the owner of a bus bearing No.AP-1U-3042. It was hired by the Mancherial Depot of APSRTC. The agreement has since come to an end.

When the bus was operating on an identified route, it met with two accidents. In respect of one accident, O.P.No.46 of 2006 was filed, in the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Karimnagar, at Jagtial, claiming a sum of Rs.1,50,000/-. The petitioner, the insurer of its bus, the driver, and the APSRTC were made parties to the OP. As regards another accident, O.P.No.92 of 2005 was filed, in the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Karimnagar, claiming a sum of Rs.2,00,000/-, almost with the same array of respondents. While O.P.No.46 of 2006 was partly allowed, awarding a sum of Rs.70,000/-, with interest at 7.5%, O.P.No.92 of 2005 was partly allowed, for a sum of

Rs.1,83,000/-. All the respondents in the O.Ps were held jointly and severally liable. It is stated that against the decree in O.P.No.92 of 2005, C.M.As were filed by the insurer, as well as the petitioner.

The respondents deducted a sum of Rs.3,59,000/-, from out of the bills payable to the petitioner, when the O.Ps were pending. On an earlier occasion, the petitioner approached this court, by filing W.P.No.20484 of 2006. The writ petition was disposed of on 28.9.2006, directing that in case, the petitioner files an undertaking to indemnify the respondents herein, he shall be paid the corresponding amount.

The petitioner filed a representation, dated 14.5.2007, after disposal of the two writ petitions referred to above, and claimed refund of a sum of Rs.1,05,500/-, on the ground that the OPs were partly allowed for a sum of Rs.2,53,500/-, and requested that the balance be paid. The respondents issued a reply, dated 26.5.2007, pointing out that the petitioner did not file a memo, to indemnify the respondents, and in that view of the matter, the request cannot be acceded to. It was also pointed out that in case, the petitioner wants the payment of the amount, he should furnish bank guarantee for the same. The petitioner challenges the communication.

Heard the learned counsel for the petitioner and learned Standing Counsel for the Corporation.

It is true that, as against the total claim of Rs.3,59,000/-, the OPs were partly allowed for a sum of Rs.2,53,500/-. The fact, however, remains that the said amount carried interest, and the decretal amount may exceed to the sum of Rs.3,59,000/-. Therefore, the petitioner cannot insist on payment of Rs.1,05,500/-, as claimed by it.

Civil Miscellaneous Appeals are said to have been filed, against the decree in O.P.No.92 of 2005, by the insurer as well as the petitioner. It is not known as to whether the decree in O.P.No.46 of 2006 has become final. If the decree has become final, the petitioner cannot claim refund of the amount withheld on that account, if only the decree has been fully satisfied by the insurer. In case, the decree has not been satisfied, as yet, the petitioner had to file an undertaking indemnifying the respondents herein, before the concerned Tribunal. If the Tribunal records the same, the petitioner shall be entitled to be released the corresponding amount.

So far as the liability of the petitioner under the decree in O.P.No.92 of 2005 is concerned, it shall be open to the petitioner, to file a miscellaneous petition before this court, undertaking to indemnifying the respondents herein, of their liability, under the decree. In case, this court records and accepts that undertaking, the petitioner shall become entitled to be paid the said amount.

The writ petition is accordingly disposed of. There shall be no order as to costs.

29th June 2007

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